

III. Remarks

A. Status of the Application

Claims 1-8, 11-13, 23, 24, and 27-29 are pending of which claims 1, 28, and 29 are independent. By this paper claims 1, 8, 28, and 29 are amended. Reconsideration of the pending claims is respectfully requested in light of the above amendments and the following remarks.

B. Claim Rejections – 35 USC § 112

The Office Action rejected claims 1-8, 11-13, 23-24, and 27-29 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. Specifically, the Office Action states with respect to claims 1, 28, and 29 that there is insufficient antecedent basis for the limitation “the tubular body.” By this paper, claim 28 has been amended as shown above to clarify the claims to recite “the tubular body portion.” Furthermore, Applicants respectfully submit with respect to claims 1 and 29 that there is proper antecedent basis for “the tubular body” as respectively recited in those claims. Accordingly, Applicant requests that the rejections to claims 1-8, 11-13, 23-24, and 27-29 under 35 U.S.C. §112 be withdrawn.

C. Claim Rejections – 35 USC § 102

The Office Action rejected independent claims 28 and 29 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,692,495 to Zacouto. Applicant respectfully traverses this rejection.

1. Independent Claim 28

With respect to amended independent claim 28, Zacouto fails to disclose an instrument for installing a vertebral implant within a vertebral column having a “second gear including a plurality of circumferentially spaced second gear teeth; a toothed section fixedly attached to and coaxially aligned with the second gear for conjoint rotation therewith about the second axis, the toothed section including a plurality of circumferentially spaced engagement teeth, wherein the

plurality of circumferentially spaced engagement teeth extend radially outwardly from the second axis further than the plurality of circumferentially spaced second gear teeth such that only the circumferentially spaced engagement teeth are configured to be received in side wall openings in a tubular body portion of the vertebral implant bounded between a pair of endplates.”

Referencing FIG. 3 of Zacouto reproduced below, the Office Action identified the top portion and the bottom portion of rotary gearwheels 50 as corresponding to the claimed second gear and tooth section, respectively.

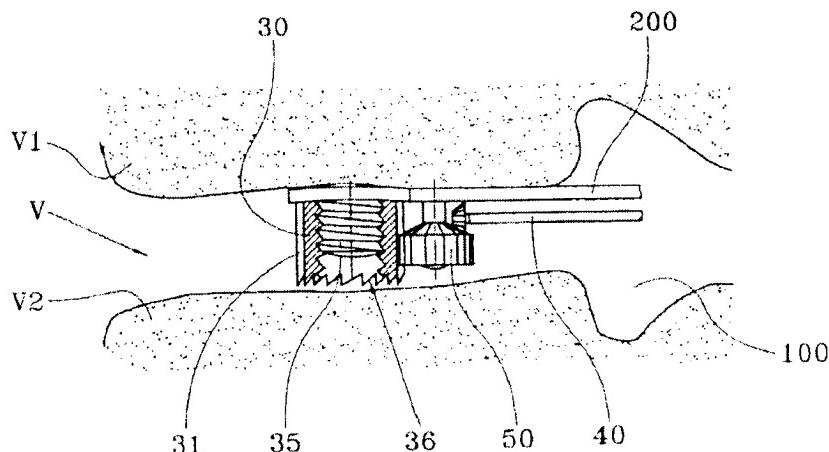


FIG.3

However, as shown below in FIG. 4, Zacouto discloses that the top portion and bottom portion of rotary gearwheels 50 have the same circumference.

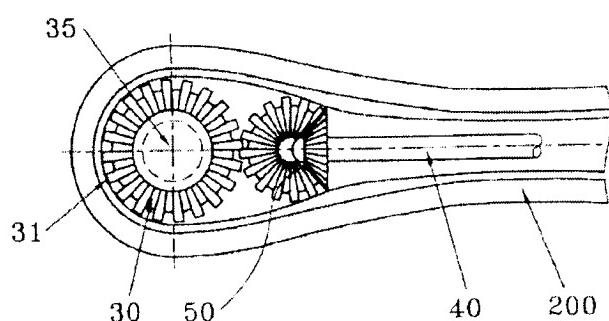


FIG.4

Thus, the bottom portion of rotary gearwheels 50 does not anticipate the claimed toothed section because the bottom portion of rotary gearwheels 50 does not extend radially outwardly further than the top portion of rotary gearwheels 50. Therefore, Zacouto entirely lacks any disclosure of

the claimed toothed section with engagement teeth. Because of this entirely missing element, Zacouto does not anticipate claim 28. Accordingly, Applicant respectfully requests that the Examiner withdraw the rejection and pass claim 28 to allowance.

2. Independent Claim 29

Independent claim 29 has been amended to recite some features similar to claim 28. In particular, claim 29 recites “an engager device separate from the set of gears and fixedly secured to one of the gears for conjoint rotation therewith, the engager device having a circumferentially spaced plurality of generally cog-shaped projections extending further in the distal direction of the axle axis than the circumferentially spaced gear teeth of the set of gears such that only the cog-shaped projections are configured for receipt in the tubular body side wall openings so that rotation of the axle, via the set of gears, drivingly rotates the tubular body relative to the end plate assemblies.” For the reasons discussed above, Zacouto does not anticipate amended independent claim 29. Accordingly, Applicant respectfully requests that the Examiner withdraw the rejection and pass claim 29 to allowance.

D. Claim Rejections – 35 USC § 103

The Office Action rejected independent claim 1 under 35 U.S.C. §103(a) as being unpatentable over Zacouto in view of U.S. Patent No. 5,732,992 to Mauldin. Applicant traverses the rejection on the grounds that the combination of the cited references are defective in establishing a *prima facie* case of obviousness with respect to the pending claims.

With respect to independent claim 1, however, the combination of Zacouto and Mauldin fails to teach or suggest an apparatus for installing a vertebral implant assembly including, “a set of gears connected to the proximal end of the axle, each gear of the set of gears having a plurality of circumferentially spaced gear teeth; and an engager device comprising a plurality of circumferentially spaced engager teeth and being connected to at least one gear of the set of gears, the plurality of circumferentially spaced engager teeth extending further in the distal direction of the axle axis than the plurality of gear teeth such that only the plurality of circumferentially spaced engager teeth engage the tubular body to rotate the tubular body when

the axle is rotated.” As discussed above with respect to claim 28, Zacouto discloses that the top and bottom portions of rotary gearwheels 50 have the same circumference. Thus, the bottom portion of rotary gearwheels 50 does not extend radially outwardly further than the top portion of rotary gearwheels 50. Mauldin does not cure this deficiency. Therefore, even when combined, Zacouto and Mauldin do not teach or suggest all the recited features of claim 1. Accordingly, Applicant respectfully requests that the Examiner withdraw the rejection and pass claim 1 to allowance.

E. Dependent Claims

Claims 2-8 and 11-13 depend from independent claim 1. Claims 23, 24, and 27 depend from independent claim 28. These claims are believed to be distinct from the art of record, for example for the same reasons discussed above with respect to their respective independent claims. Therefore, Applicants respectfully request that the Examiner reconsider and withdraw the rejection and pass these claims to allowance.

IV. Conclusion

In view of the foregoing remarks, it is believed that all matters in the Office Action have been addressed and that all of the pending claims are in a condition for allowance. A telephone interview is respectfully requested to discuss any remaining issues in an effort to expedite the allowance of this application. To that end, the Examiner is invited to contact the undersigned at 972-739-6969.

The Office Action contains characterizations of the claims and the related art of which Applicants do not necessarily agree. Unless expressly noted otherwise, Applicants decline to subscribe to any statement or characterization in the Office Action.

Respectfully submitted,



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Diane Sutton